

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Lifeline and Link Up Reform and Modernization)	WC Docket No. 11-42
)	
Telecommunications Carriers Eligible for Universal Service Support)	WC Docket No. 09-197
)	
Connect America Fund)	WC Docket No. 10-90
)	

**REPLY COMMENTS OF NATIONAL CONSUMER LAW CENTER, ON
BEHALF OF ITS LOW-INCOME CLIENTS, NATIONAL HISPANIC
MEDIA COALITION, OCA—ASIAN PACIFIC AMERICAN
ADVOCATES, AND UNITED CHURCH OF CHRIST, OC, INC.; AND
CTIA**

National Consumer Law Center, on behalf of its low-income clients National Hispanic Media Coalition, OCA – Asian Pacific American Advocates, and United Church of Christ, OC, Inc.; and CTIA submit this reply to the comments on their Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study.¹

The record confirms that the Commission should grant the Petition to pause—pending further study—two changes that would otherwise take effect on December 1, 2019: (1) an unanticipated nearly five-fold increase in the minimum required broadband data usage

¹ National Consumer Law Center, on behalf of its low-income clients, National Hispanic Media Coalition, OCA – Asian Pacific American Advocates, United Church of Christ, OC, Inc.; and CTIA, Joint Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study, WC Docket Nos. 11-42, 09-197, and 10-90 (filed June 27, 2019) (“Petition”). *See also Wireline Competition Bureau Seeks Comment on Petition to Pause Implementation of December 2019 Lifeline Minimum Service Standards Pending Forthcoming Marketplace Study*, Public Notice, DA 19-617 (WCB rel. July 1, 2019).

allowance², and (2) the phase-down in support for voice services, which are still relied upon by over 40 percent of current Lifeline subscribers. In so doing, the Commission can maintain all eligible low-income consumers' ability to choose from Lifeline service plans that meet the current minimum standards of 2 GB per month of mobile wireless broadband data and 1,000 minutes of use per month of mobile voice services, pending the *State of the Lifeline Marketplace Report* that the Commission directed the Bureau to complete by June 30, 2021.³

The comments in response to the Petition demonstrate that a broad group of stakeholders with diverse ideologies unanimously support grant of the Petition. Commenters generally agree that the Lifeline marketplace has changed in ways that the Commission could not have anticipated in 2016. Given these changes, the record demonstrates that allowing the flash-jump to the new minimum service standards and phase-down in voice support without accounting for the market realities of 2019 would restrict eligible low-income consumers' access to, and undermine the affordability of, Lifeline broadband and voice service offerings, particularly among low-income consumers who would not otherwise purchase voice or broadband services. Based on the record developed in the response to the Petition, the Commission should grant the

² See *Wireline Competition Bureau Announces Updated Lifeline Minimum Service Standards and Indexed Budget Amount*, Public Notice, DA 19-704 (rel. July 25, 2019) (announcing that the Lifeline minimum service standard for mobile broadband data usage will increase to 8.75 GB per month beginning Dec. 1, 2019); see also, Petition at 4, n. 12 (estimating a minimum service standard for mobile broadband data usage of 9.5 GB per month).

³ NTCA—The Rural Broadband Association suggests alternative relief of grandfathering existing Lifeline subscribers while applying the new requirements to new subscribers. Comments of NTCA—The Rural Broadband Association, WC Docket Nos. 11-42 *et al.* at 4-5 (filed July 31, 2019). While NTCA's support is appreciated, its grandfathering proposal would not fulfill the Lifeline program's goal of advancing affordable service for all eligible low-income consumers.

Petition to maintain eligible low-income consumers’ ability to choose the mobile wireless broadband data and voice services that best meet their needs.

A Broad, Diverse Group of Stakeholders Agree that The Commission Should Pause and Study the Minimum Service Standards. The record demonstrates agreement among the full spectrum of Lifeline stakeholders that pausing the flash-jump in the Commission’s mobile broadband minimum service standards and the voice phase-down of Lifeline support is crucial to maintaining the accessibility and affordability of Lifeline services for eligible low-income consumers. In supporting the Petition, advocates representing low-income consumers,⁴ veterans⁵ and rural communities⁶ note that the scheduled increase in the mobile broadband minimum service standards and voice phase-down “will have very harmful consequences for thousands of low-income households, including households whose members include veterans.”⁷ State policymakers also argue among other things that “low-income customers will be harmed financially and deprived of a choice of services” if the changes are allowed to go into effect.⁸ In

⁴ See Letter from Access Humboldt *et al.*, to Kris Monteith, Chief, WCB, FCC, WC Docket Nos. 11-42 *et al.* (filed July 31, 2019) (“Public Interest Group Letter”); Comments of Consumer Action & Consumer Federation of America, WC Docket Nos. 11-42 *et al.* (filed July 30, 2019) (“Consumer Federation Comments”); Comments of Free Press, WC Docket Nos. 11-42 *et al.* (filed July 31, 2019) (“Free Press Comments”); Comments of the National Association of State Utility Consumer Advocates, WC Docket Nos. 11-42 *et al.* (filed July 31, 2019).

⁵ Comments of the National Association of American Veterans, WC Docket Nos. 11-42 *et al.* (filed July 30, 2019) (“Veterans Comments”); Letter from James R. Fisher, Korean War Veterans Association, to Marlene H. Dortch, FCC, WC Docket Nos. 11-42 and 06-122 (filed Aug. 8, 2019).

⁶ Comments of the National Grange, WC Docket Nos. 11-42 *et al.* (filed July 30, 2019).

⁷ Veterans Comments at 1.

⁸ Comments of the Missouri Public Service Commission, WC Docket Nos. 11-42 *et al.* (filed Aug. 1, 2019) (“Missouri PSC Comments”); *see also* Comments of the Public Utility Commission of Oregon, 2, WC Docket Nos. 11-42 *et al.* (filed July 31, 2019) (“Oregon PUC

addition, Lifeline service providers support the Petition.⁹ The Petition also received support from an organization focused on supporting free-market policies, which affirms that the proposed changes in minimum service standards would narrow consumer choice and negatively impact affordability.¹⁰ No comments were filed that oppose the Petition.

Finally, in adopting minimum service standards for Lifeline in 2016, the Commission stated that “[n]umerous commenters support establishing minimum service standards for broadband; they emphasize that Lifeline customers should not need to accept ‘second-tier’ service,”¹¹ and cited comments from New America Foundation and state utilities regulators.¹² Notably, New America Foundation and all of the state utilities regulators that submitted

Comments”); *see also* National Association of Regulatory Utility Commissioners, Resolution on the Lifeline National Verifier Launch and Minimum Service Standards (July 24, 2019), available at <https://pubs.naruc.org/pub/673FDE8A-A3A4-9353-E4B5-DB7D61961B0B> (“NARUC July 2019 Lifeline Resolution”).

⁹ Comments of Q LINK Wireless LLC, WC Docket Nos. 11-42 *et al.* (filed July 31, 2019); Comments of Sage Telecom Communications LLC dba TruConnect, WC Docket Nos. 11-42 *et al.* (filed July 31, 2019) (“TruConnect Comments”); Comments of Sprint Corp., WC Docket Nos. 11-42 *et al.* (filed July 31, 2019); Comments of TracFone Wireless, Inc, WC Docket Nos. 11-42 *et al.* (filed July 31, 2019); Comments of National Lifeline Association, WC Docket Nos. 11-42 *et al.* (filed July 31, 2019) (“NaLA Comments”).

¹⁰ Comments of the Free State Foundation, WC Docket Nos. 11-42 *et al.* at 2 (filed July 31, 2019) (“Free State Foundation Comments”).

¹¹ *See* Q LINK Comments at 11-13 (discussing the utility of a 2 GB data plan); *id.* at 12 n. 28 (citing a 2019 Consumer Reports guide describing a 2 GB plan as a “median” plan for the average consumer).

¹² *Lifeline and Link Up Reform and Modernization et al.*, Third Report and Order, Further Report and Order, and Order on Reconsideration, 31 FCC Rcd 3962, 3989 ¶ 75 & n.205 (2016) (“2016 Lifeline Order”).

comments support the Petition.¹³ Thus, the record support that the Commission identified for the adoption of minimum service standards in 2016 now favors pausing further increases in the mobile broadband minimum standards and the voice phase-out pending further review of the Lifeline marketplace.

The Record Confirms that an Unanticipated Change to Lifeline’s Minimum Service Standards Will Have Negative Consequences for Low-Income Consumers. As noted in the Petition, the Commission directed the preparation of the *State of the Lifeline Marketplace Report* to allow for course-corrections if necessary given the scope of the changes in the *2016 Lifeline Order*.¹⁴ Consistent with this observation, commenters note that the Commission should re-evaluate the application of the formula at this time given developments since the Commission devised the mandates.¹⁵ In this regard, commenters affirm the Petition’s observation that the “five-fold increase in data service set to occur in December 2019” was “unanticipated” when the

¹³ See Public Interest Group Letter (signed by, *inter alia*, New America Foundation); Missouri PSC Comments; Oregon PUC Comments; NARUC July 2019 Lifeline Resolution.

¹⁴ Petition at 6, *citing 2016 Lifeline Order*, 31 FCC Rcd at 3987 ¶ 66 (“This [*Report*] should review the Lifeline marketplace for the purpose of recommending to the Commission whether the transition set out in this Order should be completed or whether the Commission should act to continue delaying Lifeline’s transition to chiefly supporting broadband services. This [*Report*] should in particular consider the prevalence of subscriptions to various service offerings in the Lifeline program, the affordability of both voice and broadband services, the pace since adoption of this Order at which voice and data usage has changed, and the associated net benefits of continuing to support voice service as a standalone option. We expect the full Commission will take appropriate action if necessary to make changes to the program within six months of receiving the report, for example, adjusting support levels or minimum service standards, so that the Lifeline program continues to achieve its objectives.”) (internal citations omitted).

¹⁵ See Free State Foundation Comments at 2.

rules were adopted¹⁶ and that the “Commission’s predictions used to justify the *2016 Lifeline Modernization Order*’s voice support phase-down bear little resemblance to the realities of 2019.”¹⁷ As a result, commenters expect that “the *State of the Lifeline Marketplace Report* should provide the Commission with better information to determine the future of these specific regulatory provisions in the context of assuring that the Lifeline program meets the needs of low income consumers for access to affordable telecommunications and broadband internet access services.”¹⁸ Commenters therefore support the Petition in urging the Commission to pause increases in the mobile broadband minimum standards and the voice phase-down pending analysis of the status of the Lifeline marketplace.¹⁹ Indeed, the Bureau’s *State of the Lifeline Marketplace Report* may reflect the evolution toward larger data allowances and, based on this review, the Commission will have an opportunity to craft further changes to the Lifeline minimum service standards that more predictably serve the program’s goal of ensuring affordable access to essential communications services.²⁰

¹⁶ Public Interest Group Letter at 1. *See also* Free State Foundation Comments at 2-3; NASUCA Comments at 2, 4-5; TrueConnect Comments at 3-4.

¹⁷ Free Press Comments at 2.

¹⁸ NASUCA Comments at 5.

¹⁹ *See* Consumer Federation Comments at 2; Free State Foundation Comments at 2-3; NASUCA Comments at 2, 4-5; Public Interest Group Letter at 1; TrueConnect Comments at 3-4. The *2016 Lifeline Order* unambiguously anticipated that the Commission would re-assess the formula for mobile broadband standards based on the Bureau’s analysis of the state of the Lifeline marketplace no later than mid-year 2021. *See 2016 Lifeline Order*, 31 FCC Rcd at 3995 ¶ 93.

²⁰ *See* Q LINK Comments at 7-8; NaLA Comments at 5-7 (describing the impact on affordability of the proposed increase).

Further, the record supports the Petition’s observation that a flash-jump increase in mobile broadband minimum standards and phase-down of voice support would restrict consumers’ ability to apply their Lifeline subsidy to the services that they need most.²¹ Thus, denying the Petition would have the unintended consequence of directing Lifeline support away from eligible low-income consumers most in need of access to the public safety, educational and occupational opportunities that Lifeline enables and limiting support to consumers who may have the means to purchase mobile wireless services regardless of Lifeline support. For this reason, the Commission should grant the Petition to help ensure that Lifeline support promotes the adoption of mobile wireless broadband and voice services by eligible low-income consumers that would otherwise be unable to afford monthly service plans.

* * *

For all of these reasons, the undersigned public interest, consumer, and civil rights organizations and CTIA respectfully request that the Bureau expeditiously grant the Petition and stay, until the Commission can consider the Bureau’s *State of the Lifeline Marketplace Report*,

²¹ See, e.g., TruConnect Comments at 4; Consumer Federation Comments at 1; see also Missouri PSC Comments at 2 (same regarding voice phase-down). Notably, a recent study by a market-oriented economist, who also summarized his findings on the Federalist Society’s blog, suggests that a “policy of raising minimum service standards makes the Lifeline service more attractive to higher-value users, thereby increasing displacement” by low income consumers who would have limited, if any, means to purchase unsubsidized services. See George Ford, “Proposed Reforms to FCC’s Lifeline Program Require a Bit More Thought,” Federalist Society Blog (July 22, 2019), available at <https://fedsoc.org/commentary/blog-posts/proposed-reforms-to-fcc-s-lifeline-program-require-a-bit-more-thought>. See also George S. Ford, Ph.D., *A Fresh Look at the Lifeline Program*, Phoenix Center Policy Paper Number 55 (July 2019), available at www.phoenix-center.org/pcpp/PCPP55Final.pdf.

implementation of the December 1, 2019 (1) increase in the minimum required broadband data usage allowance, and (2) phase-down in support for voice services in the Lifeline program.

Respectfully submitted,

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